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9 UNITED STATES DISTRICT COURT  
10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 ENRIQUE JEVONS, as managing  
12 member of Jevons Properties LLC,  
13 FREYA K. BURSTALLER as trustee of  
14 the Freya K. Burgstaller Revocable Trust,  
JAY GLENN and KENDRA GLENN,

15 Plaintiffs,

16 vs.

17 JAY INSLEE, in his official capacity as  
18 Governor of the State of Washington and  
19 ROBERT FERGUSON, in his official  
20 capacity of the Attorney General of the  
State of Washington,

21 Defendants.  
22

No. 1:20-CV-03182-SAB

Plaintiffs' Response to Defendants'  
Statement of Material Undisputed  
Facts and Reply Statement of Material  
Facts not in Dispute

Noted for July 1, 2021

**PLAINTIFFS' RESPONSE TO DEFENDANTS'**

**STATEMENT OF MATERIAL FACTS NOT IN DISPUTE**

Pursuant to Local Civil Rule 56(c), Plaintiffs submit this Response to Defendants Statement of Material Facts Not in Dispute in conjunction with their Cross-Motion for Summary Judgment:

<b>Defendants' Facts</b>	<b>Plaintiffs' Response and Supporting Evidence</b>
<p>1. Because of the speed with which COVID-19 spreads in a community and the portion of COVID-19 patients who require hospitalization, intensive care, and mechanical ventilation, outbreaks threaten to overwhelm the healthcare system. Lindquist Decl. ¶ 12.</p> <p>2. Without efforts to stop person-to-person transmission, studies have shown that unmitigated spread of COVID-19 would lead to an explosion of cases, many more hospitalizations and fatalities, and an untenable burden on the healthcare system. Lindquist Decl. ¶ 17.</p> <p>3. Without a vaccine or highly effective treatment for COVID-19, reducing person-to-person transmission through</p>	<p>Plaintiffs object on the grounds that there is no foundation for the conclusion that there is a present threat to overwhelm the healthcare system.</p> <p>Plaintiffs object on the grounds that there is no foundation for the conclusion that there is no vaccine for COVID-19.</p>

community mitigation measures is the most effective way of mitigating the outbreak and ensuring that the healthcare system is not overwhelmed. Lindquist Decl. ¶ 20.

4. An analysis of Seattle unlawful detainer cases showed that most evictions result in homelessness, with only 12.5% of evictees finding another home. Declaration of Cristina Sepe in Support of Defendants' Cross-Motion for Summary Judgment (Sepe Decl.), Ex. A at 3.

5. The Department of Health was concerned about outbreaks of COVID-19 among persons experiencing housing insecurity and homelessness because they are generally at increased risk of acquiring COVID-19 due to crowded living situations, among other reasons, and are often at increased risk for severe COVID-19 due to underlying medical conditions and co-morbidities. Lindquist Decl. ¶ 48.

6. Evictions themselves force

Plaintiffs object on grounds of relevance under FRE 402 in that an analysis of circumstances in Seattle is not shown to be relevant in Yakima where Plaintiffs' properties are located.

1 families into transiency and crowded residential  
2 environments that increase new contact with  
3 others and make compliance with pandemic  
4 health guidelines difficult or impossible.  
5 Lindquist Decl. ¶ 54. Housing insecure families  
6 often “double-up”—moving in with family  
7 members or friends—in the wake of evictions.  
8 Lindquist Decl. ¶ 55, Ex. J.

11 7. As of April 24, 2021, the  
12 Department of Health (DOH) has identified  
13 202 COVID-19 outbreaks in homeless services  
14 or shelters. Lindquist Decl. ¶ 58, Ex. N at 4.

16 8. A rise in evictions, and the  
17 lifting of their moratoria, has been found to  
18 lead to significant increases in COVID-19  
19 infections and deaths. Baumgart Decl. ¶10, Ex.  
20 S; Lindquist Decl. ¶¶ 60–62, Exs. O, P, Q.

Plaintiffs object on the grounds that the  
statement of fact is unsupported by the  
evidence to the extent the statement states that  
“evictions themselves force family into ...  
crowded residential environments ... and make  
compliance with pandemic health guidelines  
difficult or impossible.” The declaration  
indicates this could be true and not that it is  
true in every situation.

Plaintiffs object on the grounds of relevance  
under FRE 402 in that there is no evidence to  
show outbreaks in homeless services or shelters  
in Yakima.

Plaintiffs object on the grounds that the  
statement misstates the evidence cited, namely  
the Lindquist declaration which is based on  
simulations which is not a finding that a rise in  
evictions in fact leads to significant increases in  
infections and death.

1           9.       Containment of COVID-19 is  
2 slower and less effective at reducing the size of  
3 the pandemic when evictions are allowed to  
4 continue, even under lockdown scenarios.  
5 Lindquist Decl. ¶ 60, Ex. O.

6           10.     In amending the Moratorium,  
7 the Governor's Office sought input from many  
8 stakeholders, including residential property  
9 owners, managers, and landlords. Leathers  
10 Decl. ¶ 19; Baumgart Decl. ¶¶ 15–17. Based on  
11 their input, the Governor added several  
12 exceptions to protect property owners and  
13 induce tenants able to pay rent to do so.

14           11.     Following input from property  
15 owners regarding the treatment of unpaid rent  
16 as an enforceable debt, starting with  
17 Proclamation 20-19.1, the Moratorium allows  
18 owners to treat unpaid rent as an enforceable  
19 debt if the tenant was offered but refused a  
20 reasonable repayment plan. Baumgart Decl.  
21 ¶ 17. The provision was meant to strike a  
22 balance between alleviating stress on tenants  
23

Plaintiffs object based on relevance under FRE  
402.

Plaintiffs object on the grounds that this is not a  
statement of fact but a statement of the law, nor  
is the meaning of the law appropriate for lay or  
expert testimony.

1 and providing an avenue for landlords to be  
2 made whole. It reduces the risk of “soft  
3 evictions” while encouraging landlords and  
4 tenants to work together. *Id.*

5           12. The Governor’s Office opted to  
6 not place the burden of proof on tenants by  
7 instead imposing a moratorium on evictions  
8 with certain exceptions. Baumgart Decl. ¶ 18.  
9 This decision was made because, in many  
10 cases, tenants in genuine economic distress due  
11 to the pandemic are unable to provide adequate  
12 proof of their distress. *Id.* Many tenants have  
13 informal employment or non-traditional  
14 sources of income. For these tenants, proving  
15 distress may not be as simple as submitting a  
16 copy of a termination letter from an employer.  
17 *Id.* A tenant who does not lose their job could  
18 be facing pandemic-related economic distress  
19 anyway, such as the burden of caring for family  
20 members who lost their jobs or are unable to  
21 provide for themselves. *Id.* Not all tenants in  
22 need of protection are able to submit a  
23

1 declaration of hardship. *Id.*

2 13. The Moratorium and the  
3 Governor's public messaging has expressly  
4 stated that tenants should pay rent if able and  
5 should communicate with their landlords.

6 Baumgart Decl. ¶ 18.

7 14. The Moratorium does not  
8 forgive any debt of unpaid rent and stresses that  
9 tenants "who are not materially affected by  
10 COVID-19 should and must continue to pay  
11 rent." Leathers Decl., Ex. M.

12 15. During the pandemic, at least  
13 18,000 more Washingtonians have had to rely  
14 on cash assistance and 160,000 more on food  
15 assistance. Baumgart Decl., Ex. I at 3–4.

16 16. Over 1.6 million  
17 Washingtonians have filed unemployment  
18 claims, and the State's unemployment rate has  
19 exceeded its Great Recession peak. Baumgart  
20 Decl. ¶ 7. Through the first four months of this  
21 year, over 265,000 *new* unemployment claims  
22 were filed, showing that the jobs crisis persists  
23

Plaintiffs object on the grounds that what the  
"moratorium" states is a question of law and  
not appropriate for lay or expert testimony and  
the "public messaging" is irrelevant and should  
be excluded under FRE 402.

Plaintiffs object in that this is a statement of  
law and inappropriate for testimony and that  
the moratorium speaks for itself.

1 more than a year after COVID-19 cases first  
2 emerged here. Baumgart Decl., ¶ 7, Ex. I; Sepe  
3 Decl., Ex. I.

4 17. Recent Census survey data  
5 reported that 10.7% of renters in Washington  
6 (160,080 people) are behind on their rent.  
7 Baumgart Decl., Ex. Z. 17.8% of renters  
8 (265,342 people) reported having little or no  
9 confidence in their ability to make rent. *Id.*

10 18. An analysis by the Aspen  
11 Institute found that 649,000 to 789,000 people  
12 in Washington (up to 10.3% of the population)  
13 would be at risk of eviction without the  
14 Moratorium. Baumgart Decl., Ex. N at 8.

15 19. Projections performed by the  
16 University of Washington Institute for Health  
17 Metrics and Evaluation state that mass  
18 evictions would result in between 18,235 to  
19 59,008 more eviction-attributable COVID-19  
20 cases, 1,172 to 5,623 more hospitalizations, and  
21 191 to 621 more deaths in Washington State.  
22 Declaration of Dr. Christopher J. L. Murray in  
23

Plaintiffs object on the grounds that the  
projections are not shown to apply in Plaintiffs'  
tenants' circumstances and are, therefore,  
irrelevant and should be excluded under FRE  
402.



Support of Defendants' Cross-Motion for  
Summary Judgment (Murray Decl.), Ex. B.

20. On March 27, 2020, Congress enacted the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which included \$150 billion in direct assistance for state, territorial, and tribal governments. Pub. L. No. 116–136, 134 Stat. 281 (2020). From this fund, in early August 2020, Washington allocated more than \$100 million in Eviction Rent Assistance Program (ERAP) grants. Baumgart Decl. ¶ 12.

21. ERAP funds, administered by local community organizations, provide up to three months of rent assistance to property owners on an eligible tenant's behalf. Baumgart Decl. ¶ 12. Cities and local authorities may run their own rental assistance programs, including as encouraged through certain tax programs under state law. *Id.*

22. In April 2021, the Washington Legislature adopted—and the Governor signed

Plaintiffs object on the grounds that this statement of fact is really a statement of law and that this statement is irrelevant to the claims at issue in this case and should be excluded under FRE 402.

Plaintiffs object on the basis that the statement is vague and does not disclose that in order to be eligible for ERAP funds one must waive any right to unpaid rent beyond three months of unpaid rent.

1 into law—a bill that provides tenant protections  
2 during and after this current public health  
3 emergency. Under that bill, the eviction  
4 moratorium instituted through Proclamation  
5 20-19.6 ends on June 30, 2021. Engrossed  
6 Second Substitute S.B. 5160, 67th Leg., Reg.  
7 Sess. (Wash. 2021), *enacted as* 2021 Wash.  
8 Sess. Laws, ch. 115.

11  
12  
13 **PLAINTIFFS' REPLY TO DEFENDANTS' STATEMENT OF DISPUTED FACTS**

14 Defendants disputed only the following facts in Plaintiffs' Statement of Undisputed Facts  
15 for Motion for Summary Judgment (filed at ECF No. 23). Plaintiffs' reply follows:

16 Plaintiffs' Facts	Defendants' Response and Supporting Evidence
17 20. Tenants generally do not provide 18 information about their financial or health 19 circumstances or answer questions in an 20 attempt to gather that information.	This statement should be disregarded because it is an unsupported conclusory statement. Plaintiffs offer no evidence regarding their attempts to communicate with tenants to learn about their financial or health circumstances. A form demand letter produced by the Glenn Plaintiffs, for example, did not ask for the

1		financial or health circumstances of their
2		tenants. <i>See</i> Sepe Decl., Ex. P.
3	23. Funds available through the	Disputed, subject to clarification, though this
4	Washington State Department of Commerce	is not material as to preclude summary
5	would pay only 80% of three months of	judgment. The Eviction Rent Assistance
6	delinquent rent and the owner of the property	Program can cover unpaid rent at 80% or Fair
7	must agree to waive all other past due rent.	Market Rent, whichever amount is higher. <i>See</i>
8		ECF No. 24 at 12. Fair Market Rent for a one-
9		bedroom apartment in Yakima County is \$769
10		for FY 2020 and \$792 for FY 2021. <i>See</i> Sepe
11		Decl., Ex. S.
12	28. Because the Proclamations on eviction	This statement should be disregarded because
13	allow eviction when an owner decides to sell,	it is an unsupported conclusory statement. It is
14	numerous owners choose to sell their property,	not disputed that some property owners have
15	which further restricts the supply of rental	opted to sell their properties during the
16	housing.	pendency of the Moratorium, but whether the
17		property is no longer used as rental housing is
18		not supported by evidence.
19	46. Until September or October of 2020,	Disputed, subject to clarification, though this
20	when rental assistance is sought by a tenant	is not material as to preclude summary
21	through the Department of Commerce, if	judgment. The Eviction Rent Assistance
22	available and granted, it is limited to three	Program can cover unpaid rent at 80% or Fair
23		

1 months of unpaid rent and 80% of the rent.  
2 The Department of Commerce required the  
3 landlord to waive any other unpaid rent.  
4

Market Rent, whichever amount is higher. *See*  
ECF No. 24 at 12. Fair Market Rent for a one-  
bedroom apartment in Yakima County is \$769  
for FY 2020 and \$792 for FY 2021. *See Sepe*  
Decl., Ex. S.

6  
7 Plaintiffs' Reply follows the numbered paragraphs above:

8  
9 20. While Defendants assert this fact is conclusory, they offer nothing to dispute it, nor  
10 raise an objection based on the Federal Rules of Evidence. The asserted fact is that tenants  
11 generally do not provide financial information to their landlords (after they have applied to  
12 initially occupy the property) or provide details of their health to landlords. The lack of  
13 information coming from tenants is a natural response since it is not in the tenants' best financial  
14 interests to provide that information because they will not have to pay their unpaid rent if they do  
15 not give that information to the landlord. The fact asserted is supported by Plaintiffs' history in  
16 the rental business and historical and current interactions with tenants. *See* Second Declaration of  
17 Rick Glenn and Second Declaration of Enrique Jevons filed concurrently herewith.

18 28. This fact is not critical to the pending motion.

19  
20 23 and 46. It is not disputed that funds available through the Department of Commerce  
21 require the owners of property to waive a right to collect unpaid rent as a condition of receiving  
22 rent covering only three months.  
23

1 DATED June 9, 2021.

2 Stephens & Klinge LLP

3 s/ Richard M. Stephens

4 Richard M. Stephens, WSBA 21776  
5 10900 NE 4<sup>th</sup> Street, Suite 2300  
6 Bellevue, WA 98004  
425-453-6206

7 I, Enrique Jevons, hereby declare:

8 1. I am a Plaintiff in this action, am over 18 years of age and am competent  
9 based on my personal knowledge to testify to the following:

10 2. I am the managing member of Jevons Properties LLC which owns several  
11 hundred residential units which are rented to tenants. Jevons Properties LLC also  
12 manages rental units for other owners. I have been in this business for over 13  
13 years. It has been my experience that tenants generally do not want to disclose  
14 information about their financial circumstances to our firm, except when they have  
15 to such as when they are applying for the opportunity to rent. It has been my  
16 experience that tenants generally do not want to disclose their health or medical  
17 conditions with our firm. We have not inquired specifically about these issues with  
18 our clients because it seems to be devious on our part to ask them to give  
19 information which is definitely not in their interest to give because if they gave that  
20 information we could form a repayment plan that would be reasonable in light of  
21 their health and financial circumstances. We have no interest in being tricky.  
22  
23

1       3. Out of desperation, on April 23, 2021, our firm sent to all of our tenants who  
2 are not current with their rent, 56 in total, a letter like the one attached hereto as  
3 Exhibit A, with each tenant's name and listing of past due rents. Exhibit A has the  
4 name and address of the tenant redacted to protect that tenant's privacy. Exhibit A  
5 was intended to allow a tenant to propose a reasonable repayment plan because I  
6 have no way of knowing what would be reasonable in light of individual tenants'  
7 health and financial circumstances. In my earlier declaration I indicated that no  
8 tenants responded to requests for repayment. Since I signed that earlier declaration  
9 in April of 2021, out of the 56 that were sent out, only 3 responded with any  
10 proposed repayment plan.  
11

12       4. I declare that the foregoing is true and correct under penalty of perjury and  
13 that this declaration was executed by me in Yakima, Washington on June 9, 2021.  
14

15  
16 \_\_\_\_\_  
17 Enrique Jevons  
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